

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

RANJIT RASAILY
3385 Greenwich Street
Columbus, Ohio 43224

Plaintiff

vs.

EMPIRE FIRE AND MARINE INS. CO.
13810 FNB Parkway
Omaha, Nebraska 68154-5202

and

EMPIRE INDEMNITY INSURANCE CO.
13810 FNB Parkway
Omaha, Nebraska 68154-5202

and

ENTERPRISE HOLDINGS INC.
600 Corporate Park Drive
St. Louis, MO 63105

Defendants.

CASE NO:

JUDGE:
(Designated as "H" by counsel)

**COMPLAINT FOR BREACH OF
CONTRACT, BAD FAITH AND MONEY
DAMAGES, INCLUDING PUNITIVE
AND DECLARATORY JUDGMENT**

(JURY DEMAND ENDORSED HEREON)

Plaintiff, Ranjit Rasaily for his Complaint states as follows:

COUNT ONE-DECLARATORY RELIEF

1. Plaintiff is an individual who resides in Franklin County, Ohio whose rights may be affected by the within action.

2. Defendants Empire Fire and Marine Insurance Company and Empire Indemnity Insurance Company (hereinafter referred to as “Defendants”) are insurance companies, parent companies, subsidiary or sister companies of an insurer that is authorized to issue policies of insurance and excess policies of insurance in Ohio, and conduct a business of insurance in the State

of Ohio.

3. Defendant Enterprise Holdings Inc., (hereinafter referred to as "Enterprise") is a company that does business in Ohio and was a policyholder under a policy issued by Defendants that provided coverage to Plaintiff.

4. At all times relevant hereto, Defendants are parties whose rights may be affected by the within action.

5. Defendants issued a commercial lines policy of insurance identifying the policyholder as Enterprise under policy number RSI5525807-4, for the policy period from September 1, 2015 through September 1, 2016. (hereinafter referred to as "Policy") A copy of the policy is too large to attach per electronic filing guidelines.

6. The Policy provided for "Supplemental Rental Liability Insurance" (hereinafter referred to as "SLI") to the motoring public who purchased said coverage through Enterprise or its parent company, subsidiary or sister companies when renting a vehicle. Said policy is an automobile insurance policy under Ohio law.

7. Pursuant to the terms and condition of the policy, Defendants would pay all sums an insured legally must pay as damages because of bodily injury or property damage caused by an accident and resulting from the use of a covered "rental vehicle".

8. On or before October 26, 2015, in Franklin County, Ohio, Plaintiff rented a covered "rental vehicle" from Enterprise or its parent company, subsidiary or sister company and purchased SLI insurance.

9. Plaintiff has made numerous requests for the application of insurance, payment of the insurance, what documents were provided to Plaintiff before and after he applied and paid for the insurance and all other documentation regarding the purchase of insurance from Defendants,

however Defendants have refused to provide any documentation.

10. Plaintiff purchased SLI coverage with the understanding it would provide coverage to him and others for a loss.

11. On October 26, 2015, Plaintiff negligently operated the "rental vehicle" and as a direct and proximate result of his negligence Plaintiff's mother, who was a passenger in the "rental vehicle" died (hereinafter referred to as "accident").

12. At the time of the accident, Plaintiff had a personal policy of insurance which only provided coverage in the amount of \$50,000.00 for bodily injury which has been tendered to the Estate of Plaintiff's mother.

13. At all relevant times hereto, Plaintiff was a named insured under the insurance policy with Defendants.

14. At all relevant times hereto, the vehicle Plaintiff was operating at the time of the accident was a covered "rental vehicle" under the insurance policy.

15. The Estate of Plaintiff's mother has made demands upon Plaintiff, pursuant to Ohio's wrongful death statute, Ohio Revised Chapter 2125, seeking monies in excess of \$25,000.00 subjecting Plaintiff to financial harm with the likelihood Plaintiff will declare bankruptcy if a judgment is obtained against him.

16. Plaintiff has demanded coverage under the policy and Defendants have, without reasonable justification, refused to provide coverage alleging the exclusion contained under the insuring agreement excludes coverage for a loss sustained by any relative or family member of the insured who resides in the same household.

17. The exclusion is contrary to Ohio law specifically Ohio Revised Code Section 3937.46 and public policy.

18. Plaintiff bring this claim against Defendants pursuant to R.C. §2721.01 et seq. for a judgment declaring that the policy issued to Plaintiff provides coverage for the accident for the claims brought by the Estate.

19. Plaintiff has satisfied all conditions for bringing said claims against Defendants.

20. There is a controversy between Plaintiff and Defendants as to the rights and obligations of said parties under the policies of insurance, and Plaintiff is entitled to a determination construing the provisions of the policy and declaring the rights, duties and obligations of the parties.

COUNT TWO-BAD FAITH

21. Plaintiff hereby incorporates Paragraphs 1 through 20 of the Complaint above as if rewritten in their entirety.

22. Plaintiff has made reasonable demands for coverage under the policy of insurance.

23. Defendants have wrongfully, without reasonable justification therefore and with malice, refused to recognize, adjust, investigate and provide coverage under the policy of insurance as it relates to the claims of the Estate. Said denial letter is attached hereto as Exhibit A and incorporated herein.

24. Plaintiff, by and through counsel, advised Defendants about Ohio law and Defendants response was "Our denial was based on the exclusion as well as Allstate Ins. Co. v. Eyster, 939 N.E.2d 1274(2010). Said correspondence is attached hereto as Exhibit B and incorporated herein.

25. The case cited by Defendants in support of the denial has no bearing on the instant matter as it did not involve a wrongful death claim. Said conduct establishes bad faith on the part of Defendants.

26. Defendants were informed numerous times the exclusion contained within the

policy is contrary to Ohio law however Defendants have without reasonable justification maintained its denial of coverage for the claims brought by the Estate.

27. Defendants actions constitute bad faith pursuant to the common law tort set forth in *Zoppo v. Homestead Ins. Co.* (1994), 71 Ohio St.3d 552 and *Boone v. Vanliner Ins. Co.* (2001) 91 Ohio St.3d 209.

COUNT THREE-PUNITIVE DAMAGES

28. Plaintiff hereby incorporates Paragraphs 1 through 27 of the Complaint above as if rewritten in their entirety.

29. Defendants have acted with actual malice, fraud or insult entitling Plaintiff to an award of punitive damages and reasonable attorney's fees.

COUNT FOUR-BREACH OF CONTRACT

30. Plaintiff hereby incorporate Paragraphs 1 through 28 of the Complaint above as if rewritten in their entirety.

31. Defendants failure to provide coverage under the policy for the claims of the Estate constitutes a breach of contract.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

(1) Determining and declaring that, under the policy of insurance, Defendants is obligated to provide coverage to Plaintiff for the claims brought by the Estate up to the aforementioned limits of the policy; and

(2) Judgment against Defendants in an amount greater than \$25,000; and

(3) For punitive damages; and

(4) For reasonable attorney's fees; and

(5) For such other relief as the Court deems appropriate; and

(6) For the costs and expenses of this action.

Respectfully submitted,

/s/ David A. Goldstein

DAVID A. GOLDSTEIN (0064461)

DAVID A. GOLDSTEIN CO., L.P.A.

511 S. High Street

Suite 200

Columbus, Ohio 43215

(614) 222-1889

(614) 222-1899(Fax)

dgoldstein@dgoldsteinlaw.com

Attorney for Plaintiff

JURY DEMAND

Pursuant to Civil Rule 38, a trial by a jury composed of the maximum number of jurors permitted under law is hereby demanded on all issues triable of right.

/s/ David A. Goldstein

DAVID A. GOLDSTEIN (0064461)

OD450 - 094

Franklin County Ohio Clerk of Courts of the Common Pleas- 2017 Feb 08 11:31 AM-17CV001398
Exhibit A

Empire Fire and Marine Insurance Company
Post Office Box 4034
Schaumburg, IL 60168-4034
Telephone: 800-228-9283
Fax: 888-515-1452
<http://www.zurichna.com>

August 25, 2016

Ranjit Rasaily
3385 Greenwich St.
Columbus, OH 43224-3445

RE: Our Claim No. : 4340095344
Policyholder : Enterprise Holdings Inc.
Underwriting Co. : Empire Fire and Marine Insurance Company
Renter : Ranjit Rasaily
Driver : Ranjit Rasaily
Date of Loss : 10/26/2015

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED
AND VIA REGULAR MAIL**

Dear Mr. Rasaily:

We have received notice of a loss as a result of an incident that occurred on October 26, 2015, in or around Lafayette County, Missouri. There may be primary auto liability coverage either through Enterprise or through your own personal auto policy that may apply to this claim.

Enterprise Holdings Inc. is the policyholder of a Supplemental Liability Insurance policy, Policy No. RSI5525807, issued by Empire Fire and Marine Insurance Company, for the policy period of September 1, 2015 to September 1, 2016, and you are now claiming benefits under said policy.

The Enterprise rental vehicle was rented to you on October 23, 2015. You elected SLP, Supplemental Liability Protection, at the time of the rental. On October 26, 2015, you were driving the rental vehicle with passengers Meg Rasaily and Sun Rasaily when you were involved in an accident. Based on the information we have received, it is our position that you do not have coverage for any claims made against you by Meg Rasaily and Sun Rasaily because claims made against you by a resident relative are excluded from coverage under the policy. Referring to the Supplemental Rental Liability Insurance Policy:

SECTION I - LIABILITY INSURANCE

B. WHO IS AN INSURED

1. Only the following are "insureds" under this policy:

a. The "Rentee" who has:

- (1) Entered into a "Rental Agreement" with the "policyholder" shown in the Declarations; and
 - (2) Elected under the "Rental Agreement" to purchase optional "Supplemental Rental Liability Insurance"; and
 - (3) Paid for optional "Supplemental Rental Liability Insurance".
- b. Additional authorized drivers whose name appear on the "Rental Agreement", where the "Rentee" has complied with the a. (1), (2), and (3) above.
2. The following are not insureds under this policy:
- c. Any driver who is not an authorized driver under the terms of the "Rental Agreement", or whose name does not appear on the "Rental Agreement".

D. EXCLUSIONS

In addition to the exclusions contained in the "underlying insurance", this insurance does not apply to the following:

3. Loss arising out of "bodily injury" or "property damage" sustained by any "insured" or any relative or family member of the "insured" who resides in the same household.

Referring to the Rental Agreement signed by you:

17. Optional Supplemental Liability Protection

SLP Exclusions:

For all exclusions, see the SLP policy issued by Empire Fire and Marine Insurance Company. Here are a few key exclusions:

- (b) Loss arising out of bodily injury or property damage sustained by Renter or AAD(s) or any relative or family member of Renter or AAD(s) who resides in the same household.

Referring to the Rental Agreement signed by you:

17. Optional Supplemental Liability Protection

SLP Exclusions:

For all exclusions, see the SLP policy issued by Empire Fire and Marine Insurance Company. Here are a few key exclusions:

(b) Loss arising out of bodily injury, death or property damage sustained by Renter or AAD(s) or any relative or family member of Renter or AAD(s) who resides in the same household;

It is our position that you do not have coverage for any claims made against you by Meg Rasaily and Sun Rasaily arising out of this accident because claims of a resident relative fall within the above quoted exclusion from the policy.

If you have information that would alter our coverage position in this matter, please contact Cherie Paterson at Sedgwick Claims Management Services Inc. at 216-617-2428 and refer to her claim number 158024896.

If you have any questions, please feel free to contact me at 800-261-4429 anytime Monday through Friday; 7:00 AM to 3:45 PM, Central Time.

Sincerely,

Empire Fire and Marine Insurance Company

Sue Rudy

Sue Rudy
Claims Specialist III
(402)963-5062

Cc: Cherie Paterson
Sedgwick claims Management Services, Inc.
Your Claim No. 158024896
Cherie.paterson@sedgwickcms.com

Duane Heimann, Underwriter

Exhibit B

David Goldstein

From: Susan Rudy <sue.rudy@zurichna.com>
Sent: Thursday, October 27, 2016 9:31 AM
To: David Goldstein
Subject: RE: 4340095344/500-16151

Mr. Goldstein, our denial of coverage was based on the information that we have received indicating that Meg Rasaily and Sun Rasaily were resident relatives of Ranjit Rasaily and our policy has the following exclusion:

3. Loss arising out of "bodily injury" or "property damage" sustained by any "insured" or any relative or family member of the "insured" who resides in the same household.

Our denial was based on the exclusion as well as Allstate Ins. Co. v. Eyster, 939 N.E.2d 1274 (2010) and our position of no coverage for the resident relatives has not changed based on the information we have to date.

If you have any other information that would indicate that our position is wrong, please provide and we will review.

Sue Rudy
Claims Specialist III
Zurich North America
Empire Fire and Marine Insurance Company
PO Box 4034
Schaumburg, IL 60168
402-963-5062
888-515-1452 facsimile

From: David Goldstein [mailto:dgoldstein@dgoldsteinlaw.com]
Sent: Tuesday, October 25, 2016 8:47 PM
To: Susan Rudy
Subject: RE: 4340095344/500-16151

Please advise are you still standing behind your denial of coverage and if so please advise as to the basis.

David A. Goldstein | David A. Goldstein Co., LPA | Direct: +1-614-222-1889 | Fax: +1-614-222-1899
[dgoldstein@dgoldsteinlaw.com] | www.dgoldsteinlaw.com | 511 S. High Street, Suite 200 | Columbus, Ohio 43215

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From: Susan Rudy [mailto:sue.rudy@zurichna.com]
Sent: Tuesday, October 25, 2016 2:33 PM
To: David Goldstein <dgoldstein@dgoldsteinlaw.com>
Subject: 4340095344/500-16151

Please see attached letter.

Sue Rudy
Claims Specialist III
Zurich North America

Franklin County Ohio Clerk of Courts of the Common Pleas- 2017 Feb 08 11:31 AM-17CV001398
OD450 - 098

Empire Fire and Marine Insurance Company
PO Box 4034
Schaumburg, IL 60168
402-963-5062
888-515-1452 facsimile

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E2675 - S36

MARYELLEN O'SHAUGHNESSY

CLERK OF THE FRANKLIN COUNTY COMMON PLEAS COURT, COLUMBUS, OHIO 43215
CIVIL DIVISION

RAMJIT RASAILY
3385 GRENWICH STREET
COLUMBUS, OH 43224,

PLAINTIFF,

VS.

EMPIRE FIRE & MARINE INSURANCE CO
13810 FNB PARKWAY
OMAHA, NE 68154-5202,

DEFENDANT.

17CV-02-1398

CASE NUMBER

**** SUMMONS ****

TO THE FOLLOWING NAMED DEFENDANT:

ENTERPRISE HOLDINGS INC
600 CORPORATE PARK DR
ST LOUIS, MO 63105

02/08/17

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2017 FEB 10 PM 1:57
CLERK OF COURTS-CV

YOU HAVE BEEN NAMED DEFENDANT IN A COMPLAINT FILED IN FRANKLIN COUNTY
COURT OF COMMON PLEAS, FRANKLIN COUNTY HALL OF JUSTICE, COLUMBUS, OHIO,
BY: RAMJIT RASAILY
3385 GRENWICH STREET
COLUMBUS, OH 43224,

PLAINTIFF(S).

A COPY OF THE COMPLAINT IS ATTACHED HERETO. THE NAME AND ADDRESS OF
THE PLAINTIFF'S ATTORNEY IS:

DAVID A. GOLDSTEIN
DAVID A GOLDSTEIN CO LPA
SUITE 200
511 S HIGH ST
COLUMBUS, OH 43215

YOU ARE HEREBY SUMMONED AND REQUIRED TO SERVE UPON THE PLAINTIFF'S
ATTORNEY, OR UPON THE PLAINTIFF, IF HE HAS NO ATTORNEY OF RECORD, A COPY
OF AN ANSWER TO THE COMPLAINT WITHIN TWENTY-EIGHT DAYS AFTER THE SERVICE
OF THIS SUMMONS ON YOU, EXCLUSIVE OF THE DAY OF SERVICE. YOUR ANSWER
MUST BE FILED WITH THE COURT WITHIN THREE DAYS AFTER THE SERVICE OF A
COPY OF THE ANSWER ON THE PLAINTIFF'S ATTORNEY.

IF YOU FAIL TO APPEAR AND DEFEND, JUDGMENT BY DEFAULT WILL BE RENDERED
AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

MARYELLEN O'SHAUGHNESSY
CLERK OF THE COMMON PLEAS
FRANKLIN COUNTY, OHIO

BY: JOYCE A. BEAUMAN, DEPUTY CLERK

(CIV370-803)

E2675 - V37

FROM

MARYELLEN O'SHAUGHNESSY
FRANKLIN COUNTY CLERK OF COURTS
373 SOUTH HIGH STREET
COLUMBUS, OHIO 43215-4579

CERTIFIED
MAIL
RECEIPT

02/09/17

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COMMON PLEAS CT
FRANKLIN CO
2017 FEB 10 PM 1:53
CLERK OF COURTS-CV

ENTERPRISE HOLDINGS I
600 CORPORATE PARK DR
ST LOUIS, MO
63105

17CV-02-1398 H

RANJIT RASAILY
VS
EMPIRE FIRE & MARINE

SERVICE ITEM: 01
ORIGINAL SUMMONS

CERTIFIED
NUMBER

9214890119 522802970445

CIV354



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FRANKLIN CO. OHIO

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Date Produced: 02/20/2017

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Signature of Recipient :

Delivery Section	
Signature	<i>Jay Carter</i>
Address	<i>Jay Carter</i>

Address of Recipient :

Address	<i>Enterprise</i>
---------	-------------------

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Sincerely,
United States Postal Service

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E2675 - S37

MARYELLEN O'SHAUGHNESSY

CLERK OF THE FRANKLIN COUNTY COMMON PLEAS COURT, COLUMBUS, OHIO 43215
CIVIL DIVISION

RANJIT RASAILY
3385 GRENWICH STREET
COLUMBUS, OH 43224,

PLAINTIFF,

VS.

EMPIRE FIRE & MARINE INSURANCE CO
13810 FNB PARKWAY
OMAHA, NE 68154-5202,

17CV-02-1398

CASE NUMBER

DEFENDANT.

**** SUMMONS ****

02/08/17

TO THE FOLLOWING NAMED DEFENDANT:

EMPIRE INDEMNITY INS CO
13810 FNB PARKWAY
OMAHA, NE 68154-5202

YOU HAVE BEEN NAMED DEFENDANT IN A COMPLAINT FILED IN FRANKLIN COUNTY
COURT OF COMMON PLEAS, FRANKLIN COUNTY HALL OF JUSTICE, COLUMBUS, OHIO,

BY: RANJIT RASAILY
3385 GRENWICH STREET
COLUMBUS, OH 43224,

PLAINTIFF(S).

A COPY OF THE COMPLAINT IS ATTACHED HERETO. THE NAME AND ADDRESS OF
THE PLAINTIFF'S ATTORNEY IS:

DAVID A. GOLDSTEIN
DAVID A GOLDSTEIN CO LPA
SUITE 200
511 S HIGH ST
COLUMBUS, OH 43215

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ATTORNEY, OR UPON THE PLAINTIFF, IF HE HAS NO ATTORNEY OF RECORD, A COPY
OF AN ANSWER TO THE COMPLAINT WITHIN TWENTY-EIGHT DAYS AFTER THE SERVICE
OF THIS SUMMONS ON YOU, EXCLUSIVE OF THE DAY OF SERVICE. YOUR ANSWER
MUST BE FILED WITH THE COURT WITHIN THREE DAYS AFTER THE SERVICE OF A
COPY OF THE ANSWER ON THE PLAINTIFF'S ATTORNEY.

IF YOU FAIL TO APPEAR AND DEFEND, JUDGMENT BY DEFAULT WILL BE RENDERED
AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

MARYELLEN O'SHAUGHNESSY
CLERK OF THE COMMON PLEAS
FRANKLIN COUNTY, OHIO

BY: JOYCE A. BRAUNMAN, DEPUTY CLERK

(CIV370-803)

FILED
COMMON PLEAS COURT
FRANKLIN CO OHIO
2017 FEB 10 PM 1:57
CLERK OF COURTS-CV

E2675 - V36

FROM

MARYELLEN O'SHAUGHNESSY
FRANKLIN COUNTY CLERK OF COURTS
373 SOUTH HIGH STREET
COLUMBUS, OHIO 43215-4579

CERTIFIED
MAIL
RECEIPT

FILED
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FRANKLIN CO OH
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CLERK OF COURTS-CV

02/09/17

EMPIRE INDEMNITY INS
13810 FNB PARKWAY
OMAHA, NE
68154-5202

17CV-02-1398 H

RANJIT RASAILY
VS
EMPIRE FIRE & MARINE

SERVICE ITEM: 01
ORIGINAL SUMMONS

CERTIFIED
NUMBER

9214890119 522802970452

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Signature of Recipient :

K. Bradley

Address of Recipient :

13801
FNB + VY

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Sincerely,
United States Postal Service

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E2675 - S38

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CIVIL DIVISION

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OMAHA, NE 68154-5202,

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CASE NUMBER

DEFENDANT.

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13810 FNB PARKWAY
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COURT OF COMMON PLEAS, FRANKLIN COUNTY HALL OF JUSTICE, COLUMBUS, OHIO,

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DAVID A GOLDSTEIN CO LPA
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MARYELLEN O'SHAUGHNESSY
CLERK OF THE COMMON PLEAS
FRANKLIN COUNTY, OHIO

BY: JOYCE A. BEAUMAN, DEPUTY CLERK

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2017 FEB 10 PM 1:57
CLERK OF COURTS-CV

(CIV370-803)

E2675 - V35

FROM

MARYELLEN O'SHAUGHNESSY
FRANKLIN COUNTY CLERK OF COURTS
373 SOUTH HIGH STREET
COLUMBUS, OHIO 43215-4579

C E R T I F I E D
M A I L
R E C E I P T

02/09/17

FILED
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FRANKLIN CO. OH.
2017 FEB 10 PM 1:53
CLERK OF COURTS-CV

EMPIRE FIRE & MARINE
13810 FNB PARKWAY
OMAHA, NE
68154-5202

17CV-02-1398 H

RANJIT RASAILY
VS
EMPIRE FIRE & MARINE

SERVICE ITEM: 01
ORIGINAL SUMMONS

CERTIFIED
NUMBER

9214890119 522802970469

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Date Produced: 02/20/2017

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Signature of Recipient :

K. Bradley

Address of Recipient :

*13801
FNB + KY*

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Sincerely,
United States Postal Service

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Customer Reference Number: 6815417CV001398RASA